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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,195	04/18/2002	William L. Kopko	2709-104	8600

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EXAMINER

FREAY, CHARLES GRANT

ART UNIT	PAPER NUMBER
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3746

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,195

Applicant(s)

KOPKO, WILLIAM L.

Examiner

Charles G Freay

Art Unit

3746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 77-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 77-81 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This office action is in response to the amendment of April 19, 2004. In making the below rejections the examiner has considered and addressed each of the applicant's arguments.

As a note, the previous examiner in the case has left the office. After reviewing his rejections and the applicant's remarks the examiner agrees that the previous rejection were cumulative. The examiner has confined the rejections presented below to a few very applicable prior art references which address all the claims. The examiner apologizes for any delays this may cause the applicant.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 77 and 79 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by MUNK (USPN 4,667,465).

Munk discloses a fan (160), which increases the pressure of the airstream, followed in series by a fogger (250), which humidifies and cools the airstream, a compressor (110), a burner (170) and a turbine (120).

Claims 77 and 79 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by the Foster-Pegg Article (" Supercharging of Gas Turbines by Forced Draft Fans With Evaporative Intercooling").

Foster-Pegg discloses a fan (FD Fan in Fig. 8), which increases the pressure of the airstream, followed in series by a fogger (evaporative cooler), which humidifies and cools the airstream and a gas turbine (which is understood to mean a compressor, a burner and a turbine).

Claims 77-80 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bronicki et al (UK 2 280 224).

Bronicki et al disclose in series a fogger (222), a fan (223), a fogger (224) and a gas turbine unit (220). The foggers are used to cool the air stream and the fan is used to increase the pressure of the air stream.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 77-81 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 and 12-16 of U.S. Patent No. 6,308,512 in view of Bronicki et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant application sets forth that the cooler is a fogger and the patent discloses that the cooler is a direct evaporative cooler. Additionally, claims 78 and 80 sets forth that there is a fogger upstream of the fan. As discussed above Foster-Pegg discloses a gas turbine system having in series a fogger (222), a fan (223), a fogger (224) and a gas turbine unit (220). At the time of the invention it would have been obvious to one of ordinary skill in the art to use foggers as the direct evaporative coolers as foggers are well known and simple direct evaporative cooler arrangements. Additionally it would have been obvious to place an additional cooler in front of the fan in order to optimize the cooling and conditioning of the airstream.

Response to Arguments

Applicant's arguments filed April 19, 2004 have been fully considered but they are not persuasive. The applicant argues against the rejections previously set forth because they do not teach that "the gas turbine system is operated to provide maximum generator design rated output at summer peaking temperatures". Further, "none of the prior art references is able to increase the power output from a gas turbine system at high ambient temperatures other than by simply increasing the size of the components of the system".

Initially, the examiner notes that the phrase "wherein said gas turbine is operated to provide substantially maximum generator design rated output..." sets forth an intended use or desired result of the operation of the device. A recitation directed to the manner in which a claimed apparatus is intended to be used does not distinguish the claimed apparatus from the prior art- if the prior art has the capability to so perform. See *Ex parte Masham*, 2 USPQ2d 1647 (1987). The prior art references applied all disclose the structural elements used in the manner and for the purposes intended by the applicant. There is no basis for the applicant's argument that the only way for the prior art references to increase output would be to increase size. This argument seems to go against the very purposes set forth for the prior art references which are directed to power augmentation systems for gas turbines. The examiner finds that the operational/functional limitations set forth by the applicant in the claims have not structurally defined the claims over the prior art.

Conclusion

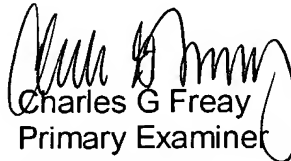
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Henderson et al discloses that an evaporative cooling system is used to meet summer energy requirements.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G Freay whose telephone number is 703-308-

0639. The examiner can normally be reached on Monday through Friday 10:00 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 703-308-2675. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Charles G Freay
Primary Examiner
Art Unit 3746

CGF
July 9, 2004